

Document No. 3083

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

## CHAPTER 61

Statutory Authority: S.C. Code Section 48-1-10 *et seq.*

Regulation 61-62, *Air Pollution Control Regulations and Standards* and the *South Carolina Air Quality Implementation Plan (SIP)*

**Synopsis:**

On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)” (also referred to as CAIR) and the “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units” (also referred to as CAMR), respectively.

CAIR was published in the *Federal Register* on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO<sub>2</sub>) and/or nitrogen oxides (NO<sub>x</sub>). Sulfur dioxide is a precursor to PM<sub>2.5</sub> formation, and NO<sub>x</sub> is a precursor to both PM<sub>2.5</sub> and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM<sub>2.5</sub> and 8-hour ozone in downwind states.

CAMR was published in the *Federal Register* on May 18, 2005 [70 FR 28606]. In accordance with Section 111 of the Clean Air Act, this rule establishes standards of performance for mercury for new and existing coal-fired EGUs that states must adopt and requires EPA review and approval. CAMR establishes a cap-and-trade program for mercury emissions from new and existing coal-fired EGUs that states can adopt as a means of complying with the Federal requirements. If a state fails to submit a satisfactory plan, referred to as a 111(d) Plan, EPA has the authority to prescribe a plan for the state.

EPA coordinated the concurrent release of CAMR with CAIR because a “co-benefit” of implementing the mechanisms for controlling SO<sub>2</sub> and NO<sub>x</sub> emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with the CAIR rule allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO<sub>2</sub> and NO<sub>x</sub>.

The EPA has established a schedule for states to submit their SIPs and 111(d) Plans. South Carolina must submit its SIP under CAIR to EPA by September 11, 2006, and the 111(d) Plan under CAMR to EPA by November 17, 2006. Due to our lengthy regulation development process, the Department has informed the EPA that our SIP and 111(d) plan will not be submitted to them by their deadlines. The EPA has already finalized a Federal Implementation Plan (FIP) and 111(d) Plan for states not meeting the deadline. However, the EPA has assured the Department that it will withdraw its FIP and 111(d) Plan when the Department finalizes and submits its SIP and 111(d) Plan to them.

The amendments of Regulation 61-62, *Air Pollution Control Regulations and Standards*, are necessary to comply with Federal rules. The Department has used its discretion to make the CAMR more stringent than the Federal rule by potentially retiring unused mercury allowances instead of providing them to affected utilities. Therefore, legislative review is required.

**Discussion of Revisions:**

## 2 FINAL REGULATIONS

### **Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards**

SECTION CITATION:	EXPLANATION OF CHANGE
R. 61-62.60, Subpart Da	R. 61-62.60, Subpart Da, has been amended to incorporate by reference Federal amendments.
R. 61-62.60, Subpart HHHH	All sections except 60.4140, 60.4141, and 60.4142 have been incorporated by referencing the Federal Clean Air Mercury Rule.
R. 61-62.60.4102	A definition for “utility” has been added.
R. 61-62.60.4140 – 60.4142	The terms “allocate,” “reallocation,” “reimburse,” “distribute,” and “transfer” have been revised to be used consistently throughout the regulation. The word “utility” was changed to “Hg budget source” where necessary to clarify that allocations would be distributed to the Hg budget sources.
R. 61-62.60.4140(a)	The table in the Federal rule indicating the South Carolina Trading Budget has been modified to a text format to include only South Carolina’s annual budget.
R. 61-62.60.4140(c)	This section has been added to explain the “Public Health Set-aside” accounts whereby 25 percent of the State’s annual budget will be put into a special account inaccessible to the utilities unless specific requirements are met. Unused allowances are to be retired after 2023.
R. 61-62.60.4140(c)(3)	This paragraph has been added to require utilities to submit a mercury emissions report, by the stated date, on an annual basis to the Department.
R. 61-62.60.4140(c)(4)(i)	The date whereby the Department will transfer allowances from the Public Health Set-aside account to a utility’s compliance account has been established as February 15 following the pertinent control period.
R. 61-62.60.4140(c)(4)(iv)	This paragraph has been added to require utilities that submit revised reports that reflect a reduction in mercury emissions will return any extra mercury allowances to the Department.
R. 61-62.60.4140(c)(5)	This paragraph establishes the retirement date for allowances in the Public Health Set-aside as 2024.
R. 61-62.60.4140(c)(6)	This section creates the possibility of a mercury study funded by the sale of allowances from the Public Health Set-aside.
R. 61-62.60.4141	This section establishes the timing for a four-year allocation period and the dates for submission of the allocations to the Administrator.

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|------------------------|---|
| R. 61-62.60.4141(a)    | This paragraph establishes November 17, 2006, as the firm date by which allowance allocations are to be submitted to the EPA for the 2010 through 2013 control periods. |
| R. 61-62.60.4141(b)(2) | This paragraph was deleted because the EPA is removing it from the Federal rule and suggested that the Department remove it also.                                       |
| R. 61-62.60.4142       | This section explains how allowances will be allocated and what information will be used to calculate allocations.  |

**Regulation 61-62.72, Acid Rain**

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|-------------------|---|
| SECTION CITATION: | EXPLANATION OF CHANGE   |
| R. 61-62.72       | The format of R. 61-62.72 has been revised to incorporate the Federal rule by reference. It also includes the revisions in subparts A and B that are a result of the Clean Air Interstate Rule. |

**R.61-62.96, Nitrogen Oxides (NO<sub>x</sub>) Budget Trading Program General Provisions**

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| SECTION CITATION:  | EXPLANATION OF CHANGE  |
| Title  | The title has been changed to “NITROGEN OXIDES (NO <sub>x</sub> ) AND SULFUR DIOXIDE (SO <sub>2</sub> ) BUDGET TRADING PROGRAM GENERAL PROVISIONS” to reflect the addition of the SO <sub>2</sub> trading program into 61-62.96.   |
| R. 61-62.96  | Subparts A through I of R. 61-62.96 are being repealed and replaced by subparts AA through IIII. The date in which subparts A through I of R. 61-62.96 will be repealed allows time for EPA to reconcile the allowance accounts. All subparts except subpart EE and subpart EEEE have been incorporated by referencing the Federal Clean Air Interstate Rule.                  |
| Subparts AA, BB, CC, II, AAA, BBB, FFF, HHH, III, AAAA, EEEE (96.342 (c)(2)), FFFF, IIII | These subparts are being revised to incorporate nonsubstantive corrections promulgated by the EPA in the <i>Federal Register</i> on December 13, 2006 [71 FR HHHH, and 28606].   |
| R. 61-62.96.140  | The table in the Federal Clean Air Interstate Rule indicating the South Carolina NO <sub>x</sub> Trading Budget has been modified to a text format to include only South Carolina’s annual budget.   |
| R. 61-62.96.141(a)   | The paragraph establishes the dates by which the Department must submit initial CAIR NO <sub>x</sub> allowance allocations to the EPA for specific control periods.  |
| R. 61-62.96.142(a)   | The methodology for the determination of allowances was modified to utilize the most current heat input data available, to establish the years from which the heat input data are to be used to determine allowances, to state that heat input data will be obtained from the Administrator, and to revise the heat input adjustments from three categories to two categories. |

## 4 FINAL REGULATIONS

R. 61-62.96.142(b) and (c)	The new unit set-aside amount was reduced from 5 percent to 3 percent for each control period, starting in 2009.
R. 61-62.96.143(a)	The table in the Federal rule indicating the South Carolina NO <sub>x</sub> compliance supplement pool has been modified to a text format to include only South Carolina's annual budget.
Title	The title "CAIR SO <sub>2</sub> Trading Program" has been added before Subpart AAA.
R. 61-62.96.201 through 96.288	These sections have been added to address the CAIR SO <sub>2</sub> Trading Program General Provisions. This language incorporates the Federal Clean Air Interstate Rule by reference.
Title	The title "CAIR NO <sub>x</sub> Ozone Season Trading Program" has been added before Subpart AAAA.
R. 61-62.96.302	The definitions of "electric generating unit" or "EGU" and "non-electric generating unit" or "non-EGU" have been added.
R. 61-62.96.302	The definitions of "fossil-fuel-fired," "commence operation," and "unit" were revised.
R. 61-62.96.304(a)(1)(ii)(A) and (B)	These paragraphs were added to clarify the non-EGU applicability requirements for units currently subjected to the NO <sub>x</sub> SIP Call. The NO <sub>x</sub> SIP Call trading program will be discontinued upon the initiation of the NO <sub>x</sub> trading program for CAIR.
R. 61-62.96.304(a)(2) and (b)	This statement was added and references to (a)(1) changed to (a)(1)(i) to ensure that these portions of the section applied to EGUs only and not to non-EGUs.
R. 61-62.96.340(a)	The NO <sub>x</sub> Ozone Season Trading Budget in EPA's model rule was revised to include only the budget for South Carolina.
R. 61-62.96.340(b)	This paragraph was added to include the NO <sub>x</sub> Ozone Season Trading Budget from the NO <sub>x</sub> SIP Call for non-EGUs.
R. 61-62.96.341(a)	These paragraphs establish the timing by which the Department must submit initial CAIR NO <sub>x</sub> allowance allocations to the EPA for specific control periods.
R. 61-62.96.341(b)	These paragraphs establish the timing by which the Department must submit CAIR NO <sub>x</sub> allowance allocations for non-EGUs.
R. 61-62.96.341(b)(1)(ii) and (iii)	These paragraphs were added to state that the allocations will be made in accordance with section 96.342(e).
R. 61-62.96.341(b)(2)	This paragraph establishes the timing by which the Department must submit to the EPA CAIR NO <sub>x</sub> Ozone Season allowance allocations for non-EGUs.

- R. 61-62.96.341(b)(3) This paragraph establishes the date by which the Department must submit new unit set-aside allocations to the EPA.
- R. 61-62.96.342(a)(1) The methodology for the determination of allowances was modified to utilize the most current heat input data available, to establish the years from which the heat input data are to be used to determine allowances, and to revise the heat input adjustments based on fuel types from three categories to two categories.
- R. 61-62.96.342(a)(1)(i) and (ii) These paragraphs were revised to clarify how the allowances for 2009 through 2012 would be determined for the CAIR NO<sub>x</sub> units as per a comment from the EPA.
- R. 61-62.96.342(a)(2) Language was added to this paragraph to state that the best available heat input data will be used for units that were not otherwise subjected to 40 CFR part 75 for the year and that heat input data will be obtained from the Administrator.
- R. 61-62.96.342(b), (c) and (d) The new source set-aside amount was reduced from 5 percent to 3 percent for each control period, starting in 2009.
- R. 61-62.96.342(b)(3) This paragraph was added to allow the EPA to take allowances from the CAIR allocations for penalties under the NO<sub>x</sub> SIP Call trading program if a utility did not have enough allowances for 2008.
- R. 61-62.96.342(e) This section was added to address the incorporation of non-EGUs into the CAIR NO<sub>x</sub> Ozone Season trading program. It explains how allowances will be determined and establishes a new source set-aside for non-EGUs.
- R. 61-62.96.342(e)(1)(ii) This paragraph clarifies the heat input value that is to be used to determine allocations.
- R. 61-62.96.342(e)(3) This paragraph was revised to indicate that the Department will use the best available data to determine the heat input used to calculate allocations.
- R. 61-62.96.342(g)(2) The term “commences commercial operation” was changed to “commences operation.”
- R. 61-62.96.342(g)(4)(ii) The date that the Department will determine non-EGU new source set-aside allowances has been changed.

**Instructions:** Amend R.61-62 per each individual instruction provided below for 61-62.60, 61-62.72, and 61-62.96.

*Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, subpart Da, is revised as follows:*

**Subpart Da - “Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978”**

## **6 FINAL REGULATIONS**

The provisions of Title 40 CFR Part 60, subpart Da, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 60 subpart Da</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 44	June 11, 1979	[44 FR 33613]
Revision	Vol. 48	January 27, 1983	[48 FR 3737]
Revision	Vol. 54	February 14, 1989	[54 FR 6663]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 55	February 14, 1990	[55 FR 5212]
Revision	Vol. 55	May 7, 1990	[55 FR 18876]
Revision	Vol. 63	September 16, 1998	[63 FR 49453, 49454]
Revision	Vol. 64	February 12, 1999	[64 FR 7464]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 66	April 10, 2001	[66 FR 18546]
Revision	Vol. 66	June 11, 2001	[66 FR 31177]
Revision	Vol. 66	August 14, 2001	[66 FR 42608]
Revision	Vol. 70	May 18, 2005	[70 FR 28606]
Revision	Vol. 70	August 30, 2005	[70 FR 51266]
Revision	Vol. 71	June 9, 2006	[71 FR 33388]

*Regulation 61-62.60, subpart HHHH, section 60.4101 through 60.4130 and sections 60.4150 through 60.4176, shall be added as follows:*

#### **Subpart HHHH - “Emission Guidelines And Compliance Times For Coal-Fired Electric Steam Generating Units”**

The provisions of Title 40 CFR Part 60, subpart HHHH, sections 60.4101 through 60.4130 and sections 60.4150 through 60.4176, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 60 subpart HHHH</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 18, 2005	[70 FR 28606]
Revision	Vol. 71	June 9, 2006	[71 FR 33388]

*The following definition is added to Section 60.4102 Definitions:*

Utility - a unit or a group of units located in South Carolina that are owned by a common entity and produce electricity for sale. If the unit is owned by two or more utilities, the Hg designated representative or the alternate Hg designated representative shall specify the primary utility for the unit. The primary utility will be the recipient of any Hg allowances allocated for this unit.

*The remainder of Section 60.4102 remains unchanged.*

*Regulation 61-62.60, subpart HHHH, sections 60.4140 through 60.4142, shall be added as follows:*

#### **Hg Allowance Allocations**

##### **Section 60.4140 South Carolina Trading Budget**

## 8 FINAL REGULATIONS

(a) The South Carolina trading budget for annual allocations of Hg allowances for 2010 through 2017 is 0.580 tons (18,560 ounces) per control period. The South Carolina trading budget for 2018 and thereafter is 0.229 tons (7,328 ounces) per control period.

(b) The Department will allocate Hg allowances to affected Hg budget sources according to 60.4142.

(c) (1) The Department will distribute allowances to the affected Hg budget sources as provided in Section 60.4142 equal to 75 percent of the Hg budget source's allocations for each control period in 2010-2017. The Department will distribute allowances to the affected Hg budget sources as provided in Section 60.4142 equal to 100 percent of the Hg budget source's allocations for each control period in 2018 and thereafter.

(2) The Department will establish a Public Health Set-aside account for each affected utility in the State for the 2010-2017 control periods. The Department will allocate allowances to the utility's Public Health Set-aside accounts equal to 25 percent of the utility's allocations for each control period in 2010-2017 as provided in section 60.4142. The allowances will be held in each utility's individual Public Health Set-aside account.

(3) On or before January 31 following the control periods 2010 through 2023, the total amount of a utility's Hg emissions, in ounces, for each Hg budget source subject to the requirements of this rule must be submitted to the Department for that control period by the utility. A utility that has a balance of zero allowances in its Public Health Set-aside account for 2018 or any year thereafter is not required to submit this report to the Department.

(4) For each control period in 2010 through 2023, the Department will transfer Hg allowances from a utility's Public Health Set-aside account to cover emissions that exceed its allocations for that control period, if necessary, based upon the Hg emissions reported according to paragraph (3) of this section. To be eligible to receive allowances from its Public Health Set-aside account, the utility must follow good operating practices and properly operate any air pollution control equipment whose primary or secondary function reduces mercury emissions.

(i) Before midnight of February 15, if it is a business day, or, if February 15 is not a business day, midnight of the first business day thereafter immediately following each control period in 2010 through 2023, the Department will transfer Hg allowances from the utility's Public Health Set-aside account to the affected utility's Hg budget source account as prescribed in section 61-60.4140(c)(4) above.

(ii) For each control period in 2010 through 2017, a utility is eligible to receive allowances from its Public Health Set-aside account, up to but not exceeding the number of allowances put in its Public Health Set-aside account during the same control period, less any allowances sold as per paragraph (6) of this section. Unused Public Health Set-aside allowances will be banked in the utility's Public Health Set-aside account.

(iii) For each control period in the years 2018 through 2023, any unused allowances in a utility's Public Health Set-aside account will be made available for use by the utility. To be eligible to receive allowances from its Public Health Set-aside account during the control periods in 2018 through 2023, the utility's Hg emissions must be greater than the allowances allocated to it for the specific control period in which its emissions exceeded its allocations, based upon the Hg emissions reported according to paragraph (3) of this section.

(iv) If the utility revises and resubmits its report of emissions, as required in paragraph (3) above, to the Department and to the EPA after allowances have been transferred to its affected Hg budget source account from its Public Health Set-aside account and reports fewer emissions, and the EPA has not reconciled the account, any excess allowances must be returned to the State for transfer back into the utility's



Public Health Set-aside account within fifteen (15) days of the submission of the revised report of emissions or within ten (10) days after the date of reconciliation.

(5) In 2024, any allowances remaining in any Public Health Set-aside account will be permanently retired.

(6) The Department will form an advisory committee consisting of but not limited to representatives from the Department, utilities that receive Hg allocations, environmental groups, and academia from South Carolina.

(i) The advisory committee will advise and make recommendations to the Department as to the necessity of a State Hg study, the scope of the study, the projected annual cost and the number of years over which the study will be conducted, and the methodology for determining how the utilities will share the burden of providing allowances from the Public Health Set-aside accounts. Hg allowances from the utilities' Public Health Set-aside accounts may be sold by the Department to fund this study and related studies at any time before the retirement of allowances remaining in the Public Health Set-aside accounts in 2024. Funds from the sale of these Hg allowances will be placed in a restricted account, and the money will be used only to fund studies as determined necessary and relevant by the Department.

(ii) The Department and the advisory committee periodically may review any available data, to include but not be limited to the state of Hg control technology, the results of Hg deposition studies conducted within or outside the scope of the study funded by the sale of Hg allowances, and information regarding Hg contamination in surface waters and fish tissue in South Carolina. The Department may issue a report of the findings.

(7) Using the information in this Hg report issued as per (c)(6) of this section, the Department may determine if additional control technology should be required of specific units or facilities. If additional control technologies are required, the Department will impose these requirements through an order, consent decree, permit revision, or revisions to this rule pertaining to the installation and operation of control technology on existing and new coal-fired units. Also, the Department could propose revisions to the Phase II allocations. The order, consent decree, permit revision, or revision to this rule will specify the schedule for installing and operating the required control technology.

#### **Section 60.4141 Timing Requirements for Hg Allowance Allocations.**

(a) By November 17, 2006, the Department will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with section 60.4142(a) and (b), for the control periods in 2010, 2011, 2012, and 2013.

(b) By October 31, 2010, and October 31 of each four years thereafter, the Department will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with section 60.4142(a) and (b), for the control periods in the fourth, fifth, sixth, and seventh years after the year of the applicable deadline for submission under this paragraph.

#### **Section 60.4142 Hg Allowance Allocations.**

(a) For a Hg allowance allocation under section 60.4141(a) and (b), the Department will allocate Hg allowances to each Hg budget source by summing the amount determined for each of the utility's Hg Budget units.

(b) Each Hg budget unit's baseline heat input will be determined using the single highest amount of the unit's heat input for the control periods that are five, six, seven and eight years before the first year of the period for which the Hg allowance allocation is being calculated, except as provided in paragraph (c) of this section.

## 10 FINAL REGULATIONS

Each unit's allocation will be determined by multiplying the total amount of Hg allowances allocated under section 60.4140 by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.

(c) A unit's control period heat input for a calendar year under paragraphs (a) and (b) of this section will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. Heat input data will be obtained from the Administrator.

(d) Each unit's allocation will be determined by multiplying the total amount of Hg allowances allocated under section 60.4140 by the ratio of the baseline heat input of such Hg budget unit to the total amount of baseline heat input of all such Hg budget units in the State and rounding to the nearest whole allowance as appropriate.

*Regulation 61-62.72, Acid Rain, shall be replaced in its entirety to read as follows:*

### **SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

#### **AIR POLLUTION CONTROL REGULATIONS AND STANDARDS**

#### **REGULATION 61-62.72 ACID RAIN**

##### **Subpart A - "General Provisions"**

The provisions of Title 40 CFR Part 72, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart A</b>			
<b>Federal Register Citation</b>	<b>Volume</b>	<b>Date</b>	<b>Notice</b>
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 58	June 21, 1993	[58 FR 33769]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 60	May 17, 1995	[60 FR 26510]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 62	December 18, 1997	[62 FR 66278]
Revision	Vol. 63	October 27, 1998	[63 FR 57356]
Revision	Vol. 63	December 11, 1998	[63 FR 68400]
Revision	Vol. 64	May 13, 1999	[64 FR 25834]
Revision	Vol. 64	May 26, 1999	[64 FR 28564]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]
Revision	Vol. 67	June 12, 2002	[67 FR 40394]
Revision	Vol. 67	August 16, 2002	[67 FR 53503]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 70	May 18, 2005	[70 FR 28606]

<b>40 CFR Part 72 subpart A</b>			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 71	April 28, 2006	[71 FR 25328]

### **Subpart B - “Designated Representative”**

The provisions of Title 40 CFR Part 72, subpart B, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart B</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25328]

### **Subpart C - “Acid Rain Permit Applications”**

The provisions of Title 40 CFR Part 72, subpart C, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart C</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

### **Subpart D - “Acid Rain Compliance Plan And Compliance Options”**

The provisions of Title 40 CFR Part 72, subpart D, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart D</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218, 60234]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 64	May 13, 1999	[64 FR 25834]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

## 12 FINAL REGULATIONS

### Subpart E - “Acid Rain Permit Contents”

The provisions of Title 40 CFR Part 72, subpart E, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart E</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]

### Subpart F - “Federal Acid Rain Permit Issuance Procedures”

The provisions of Title 40 CFR Part 72, subpart F, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart F</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]

### Subpart G - “Acid Rain Phase II Implementation”

The provisions of Title 40 CFR Part 72, subpart G, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart G</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

### Subpart H - “Permit Revisions”

The provisions of Title 40 CFR Part 72, subpart H, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart H</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]

**Subpart I - “Compliance Certification”**

The provisions of Title 40 CFR Part 72, subpart I, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 72 subpart I</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 64	May 26, 1999	[64 FR 28564]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]

*Regulation 61-62.96, Nitrogen Oxides (NO<sub>x</sub>) Budget Trading Program, shall be revised as follows:*

**SOUTH CAROLINA**  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
**AIR POLLUTION CONTROL REGULATIONS AND STANDARDS**

**REGULATION 61-62.96**  
**NITROGEN OXIDES (NO<sub>x</sub>) AND SULFUR DIOXIDE (SO<sub>2</sub>) BUDGET TRADING PROGRAM**  
**GENERAL PROVISIONS**

The provisions of 61-62.96, Subparts AAAA through IIII, supersede the provisions of 61-62.96, “Nitrogen Oxides (NO<sub>x</sub>) Budget Trading Program,” Subparts A through I, in accordance with the following schedule:

For control periods 2009 and beyond, the provisions of 61-62.96, Subparts A through I, are repealed effective April 30, 2009.

**CAIR NO<sub>x</sub> ANNUAL TRADING PROGRAM****Subpart AA - “South Carolina CAIR NO<sub>x</sub> Annual Trading Program General Provisions”**

The provisions of Title 40 CFR Part 96, subpart AA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart AA</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

## 14 FINAL REGULATIONS

### Subpart BB - “CAIR Designated Representative For CAIR NO<sub>x</sub> Sources”

The provisions of Title 40 CFR Part 96, subpart BB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart BB</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Subpart CC - “Permits”

The provisions of Title 40 CFR Part 96, subpart CC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart CC</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Subpart DD - [Reserved]

### Subpart EE - “CAIR NO<sub>x</sub> Allowance Allocations”

#### Section 96.140 South Carolina Trading Budget.

The South Carolina trading budget for annual allocations of CAIR NO<sub>x</sub> allowances for the control periods in 2009 through 2014 is 32,662 tons, and in 2015 and thereafter is 27,219 tons.

#### Section 96.141 Timing Requirements For CAIR NO<sub>x</sub> Allowance Allocations.

(a) By April 30, 2007, the Department will submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.142(a) and (b), for the control periods in 2009, 2010, 2011, and 2012.

(b) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.142(a) and (b), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(c) By October 31, 2009, and October 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations for new units from the new unit set-aside account, in a format prescribed by the Administrator and in accordance with section 96.142(a), (c), and (d) for the control period in the year of the applicable deadline for submission under this paragraph.

#### Section 96.142 CAIR NO<sub>x</sub> Allowance Allocations.

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO<sub>x</sub> allowance allocations for each CAIR NO<sub>x</sub> unit will be:

(i) The allowances allocated for the years 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control periods for which the CAIR NO<sub>x</sub> annual allowance allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(ii) For a CAIR NO<sub>x</sub> allowance allocation under section 96.141(b), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven and eight years before the control periods for which the CAIR NO<sub>x</sub> annual allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(2) A unit's control period heat input, and a unit's status as coal-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO<sub>x</sub> emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. Heat input data under 40 CFR part 75 will be obtained from the Administrator.

(b) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO<sub>x</sub> units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO<sub>x</sub> allowances equal to 97 percent for a control period of the tons of NO<sub>x</sub> emissions in the State trading budget under section 96.140 (except as provided in paragraph (d) of this section).

(2) The Department will allocate CAIR NO<sub>x</sub> allowances to each CAIR NO<sub>x</sub> unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO<sub>x</sub> allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO<sub>x</sub> unit to the total amount of baseline heat input of all such CAIR NO<sub>x</sub> units in the State and rounding to the nearest whole allowance as appropriate.

(c) **New Unit Set-aside:** For each control period in 2009 and thereafter, the Department will allocate CAIR NO<sub>x</sub> allowances to CAIR NO<sub>x</sub> units in the State that are not allocated CAIR NO<sub>x</sub> allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO<sub>x</sub> allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

## 16 FINAL REGULATIONS

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO<sub>x</sub> allowances equal to 3 percent for a control period of the amount of tons of NO<sub>x</sub> emissions in the State trading budget under section 96.140.

(2) The CAIR designated representative of such a CAIR NO<sub>x</sub> unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO<sub>x</sub> allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO<sub>x</sub> unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO<sub>x</sub> allowances under paragraph (b) of this section. A separate CAIR NO<sub>x</sub> allowance allocation request for each control period for which CAIR NO<sub>x</sub> allowances are sought must be submitted on or before May 1 of such control period.

(3) In a CAIR NO<sub>x</sub> allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO<sub>x</sub> allowances in an amount not exceeding the CAIR NO<sub>x</sub> unit's total tons of NO<sub>x</sub> emissions during the calendar year immediately before such control period in accordance with subpart HH of this regulation.

(4) The Department will review each CAIR NO<sub>x</sub> allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO<sub>x</sub> allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Department will determine the sum of the CAIR NO<sub>x</sub> allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO<sub>x</sub> allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO<sub>x</sub> allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO<sub>x</sub> unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO<sub>x</sub> allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO<sub>x</sub> unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO<sub>x</sub> allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO<sub>x</sub> allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO<sub>x</sub> allowances (if any) allocated for the control period to the CAIR NO<sub>x</sub> unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO<sub>x</sub> allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO<sub>x</sub> unit that was allocated CAIR NO<sub>x</sub> allowances under paragraph (b) of this section an amount of CAIR NO<sub>x</sub> allowances equal to the total amount of such remaining unallocated CAIR NO<sub>x</sub> allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 97 percent for a control period of the amount of tons of NO<sub>x</sub> emissions in the State trading budget under section 96.140, and rounded to the nearest whole allowance as appropriate.



**Section 96.143 Compliance Supplement Pool.**

(a) In addition to the CAIR NO<sub>x</sub> allowances allocated under section 96.142, the Department may allocate for the control period in 2009 up to 2,600 tons of CAIR NO<sub>x</sub> allowances to CAIR NO<sub>x</sub> units in the State. These allowances are referred to as the Compliance Supplement Pool.

(b) For any CAIR NO<sub>x</sub> unit in the State that achieves NO<sub>x</sub> emission reductions in 2007 and 2008 that are not necessary to comply with any State or Federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO<sub>x</sub> allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO<sub>x</sub> units shall monitor and report the NO<sub>x</sub> emissions rate and the heat input of the unit in accordance with part 96 subpart HH of this regulation in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO<sub>x</sub> unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO<sub>x</sub> allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO<sub>x</sub> emission reductions in 2007 and 2008 that are not necessary to comply with any State or Federal emissions limitation applicable during such years, determined in accordance with part 96 subpart HH of this regulation.

(c) For any CAIR NO<sub>x</sub> unit in the State whose compliance with the CAIR NO<sub>x</sub> emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO<sub>x</sub> allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR NO<sub>x</sub> unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO<sub>x</sub> allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO<sub>x</sub> allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO<sub>x</sub> unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO<sub>x</sub> allowances requested, the unit's compliance with the CAIR NO<sub>x</sub> emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO<sub>x</sub> emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO<sub>x</sub> allowances to prevent such undue risk.

(d) The Department will review each request under paragraph (b) or (c) of this section submitted by May 1, 2009 and will allocate CAIR NO<sub>x</sub> allowances for the control period in 2009 to CAIR NO<sub>x</sub> units in the State and covered by such request as follows:

(1) Upon receipt of each such request, the Department will make any necessary adjustments to the request to ensure that the amount of the CAIR NO<sub>x</sub> allowances requested meets the requirements of paragraph (b) or (c) of this section.

## 18 FINAL REGULATIONS

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO<sub>x</sub> allowances not less than the total amount of CAIR NO<sub>x</sub> allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate to each CAIR NO<sub>x</sub> unit covered by such requests the amount of CAIR NO<sub>x</sub> allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO<sub>x</sub> allowances than the total amount of CAIR NO<sub>x</sub> allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate CAIR NO<sub>x</sub> allowances to each CAIR NO<sub>x</sub> unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

“Unit's allocation” is the amount of CAIR NO<sub>x</sub> allowances allocated to the unit from the State's compliance supplement pool.

“Unit's adjusted allocation” is the amount of CAIR NO<sub>x</sub> allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

“State's compliance supplement pool” is the amount of CAIR NO<sub>x</sub> allowances in the State's compliance supplement pool.

“Total adjusted allocations for all units” is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By November 30, 2009, the Department will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

### Subpart FF - “CAIR NO<sub>x</sub> Allowance Tracking System”

The provisions of Title 40 CFR Part 96, subpart FF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart FF</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Subpart GG - “CAIR NO<sub>x</sub> Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart GG</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

### **Subpart HH - “Monitoring and Reporting”**

The provisions of Title 40 CFR Part 96, subpart HH, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart HH</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

### **Subpart II - “CAIR NO<sub>x</sub> Opt-in Units”**

The provisions of Title 40 CFR Part 96, subpart II, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart II</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

## **CAIR SO<sub>2</sub> TRADING PROGRAM**

### **Subpart AAA - “CAIR SO<sub>2</sub> Trading Program General Provisions”**

The provisions of Title 40 CFR Part 96, subpart AAA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart AAA</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### **Subpart BBB - “CAIR Designated Representative for CAIR SO<sub>2</sub> Sources”**

The provisions of Title 40 CFR Part 96, subpart BBB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

## 20 FINAL REGULATIONS

<b>40 CFR Part 96 subpart BBB</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Subpart CCC - “Permits”

The provisions of Title 40 CFR Part 96, subpart CCC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart CCC</b>			
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Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
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### Subpart DDD [Reserved]

### Subpart EEE [Reserved]

### Subpart FFF - “CAIR SO<sub>2</sub> Allowance Tracking System”

The provisions of Title 40 CFR Part 96, subpart FFF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart FFF</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Subpart GGG - “CAIR SO<sub>2</sub> Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GGG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart GGG</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

### Subpart HHH - “Monitoring and Reporting”

The provisions of Title 40 CFR Part 96, subpart HHH, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart HHH</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Subpart III - “CAIR SO<sub>2</sub> Opt-in Units”

The provisions of Title 40 CFR Part 96, subpart III, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 96 subpart III</b>			
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Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
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Revision	Vol. 71	December 13, 2006	[71 FR 74792]

## CAIR NO<sub>x</sub> OZONE SEASON TRADING PROGRAM

### Subpart AAAA - “CAIR NO<sub>x</sub> Ozone Season Trading Program General Provisions”

The provisions of Title 40 CFR Part 96, subpart AAAA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein, except as noted below.

<b>40 CFR Part 96 subpart AAAA</b>			
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

*The following definitions are added to Section 96.302 Definitions:*

“Electric Generating Unit” or “EGU” – any unit subject to this regulation as specified in section 96.304 (a)(1)(i), (a)(2) and (b).

“non-Electric Generating Unit” or “non-EGU” – any unit subject to this regulation as specified in section 96.304 (a)(1)(ii).

*The following definitions are revised in Section 96.302 Definitions:*

“Commence operation” - (a) For units subject to 96.304 (a)(1)(i), (a)(2), or (b), “commence operation” means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber, except as provided in 96.384(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

## 22 FINAL REGULATIONS

(3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in 96.384(h).

(b) For a unit subject to 96.304 (a)(1)(ii), it means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in 40 CFR Section 96.5, for a unit that is a NO<sub>x</sub> Budget unit under Section 96.304 (a)(1)(ii) on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in 40 CFR Section 96.5, for a unit that is not a NO<sub>x</sub> Budget unit under Section 96.304 (a)(1)(ii) on the date of commencement of operation, the date the unit becomes a NO<sub>x</sub> Budget unit under Section 96.304 (a)(1)(ii) shall be the unit's date of commencement of operation.

"Fossil-fuel-fired" - (a) For a unit subject to 96.304 (a)(1)(i), (a)(2) or (b), "fossil-fuel-fired" means with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(b) For a unit subject to 96.304 (a)(1)(ii) it means with regard to a unit:

(1) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995.

(2) For units that commenced operation on or after January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year.

(3) Notwithstanding the definition set forth in (b)(1) above, a unit shall be deemed fossil-fuel-fired if on any year after January 1, 2001, the fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis.

"Unit" - (a) For a unit subject to 96.304 (a)(1)(i), (a)(2), or (b), "unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(b) For a unit subject to 96.304 (a)(1)(ii), "unit" means a fossil-fuel-fired stationary boiler, combustion turbine, or combined cycle system.

### **Section 96.304 Applicability.**

(a) Except as provided in paragraph (b) of this section,

(1) The following units in the State shall be CAIR NO<sub>x</sub> Ozone Season units, and any source that includes one or more such units shall be a CAIR NO<sub>x</sub> Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part:

(i) **EGU Applicability:** Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

**(ii) Non-EGU Applicability:**

(A) For units that commenced operation before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and does not serve a generator that has a nameplate capacity greater than 25 MWe if any such generator produces an annual average of more than one-third of its potential electrical output capacity for sale to the electric grid during any three calendar year period.

(B) For units that commenced operation on or after January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr that:

(i) At no time served a generator producing electricity for sale; or

(ii) At any time served a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1)(i) of this section, is not a CAIR NO<sub>x</sub> Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO<sub>x</sub> Ozone Season unit as provided in paragraph (a)(1)(i) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) This section applies only to units that are subject to section 96.304(a)(1)(i) or (a)(2). The units in a state that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO<sub>x</sub> Ozone Season units:

(1)(i) Any unit that is a CAIR NO<sub>x</sub> Ozone Season unit under paragraph (a)(1)(i) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990, or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO<sub>x</sub> Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO<sub>x</sub> Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

## 24 FINAL REGULATIONS

(ii) Any unit that is a CAIR NO<sub>x</sub> Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO<sub>x</sub> Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

### Subpart BBBB - “CAIR Designated Representative for CAIR NO<sub>x</sub> Ozone Season Sources”

The provisions of Title 40 CFR Part 96, subpart BBBB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart BBBB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

### Subpart CCCC - “Permits”

The provisions of Title 40 CFR Part 96, subpart CCCC, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart CCCC			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

### Subpart DDDD [Reserved]

### Subpart EEEE - “CAIR NO<sub>x</sub> Ozone Season Allowance Allocations”

#### Section 96.340 South Carolina trading budget.

(a) For NO<sub>x</sub> budget units defined as EGUs, the South Carolina trading budget for annual allocations of CAIR NO<sub>x</sub> Ozone Season allowances for the control periods in 2009 through 2014 is 15,249 tons and in 2015 and thereafter is 12,707 tons.

(b) For NO<sub>x</sub> budget units defined as non-EGUs, the South Carolina trading budget for annual allocations of CAIR NO<sub>x</sub> Ozone Season allowances for 2009 and thereafter is 3,479 tons.



**Section 96.341 Timing requirements for CAIR NO<sub>x</sub> Ozone Season allowance allocations.**

(a) For NO<sub>x</sub> Budget units defined as EGUs, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations as follows:

(1) By April 30, 2007, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(a) and (b), for the control periods in 2009, 2010, 2011, and 2012.

(2) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(a) and (b), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31, 2009, and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations for the new unit set-aside, in a format prescribed by the Administrator and in accordance with section 96.342 (c) for the control period in the year of the applicable deadline for submission under this paragraph.

(b) For NO<sub>x</sub> Budget units defined as non-EGUs, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations as follows:

(1) (i) By April 30, 2007, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in a format prescribed by the Administrator, for the control periods in 2009, 2010, 2011 and 2012.

(ii) The CAIR NO<sub>x</sub> Ozone Season allowance allocations for 2009, 2010, and 2011 will be determined in accordance with section 96.342(e).

(iii) The CAIR NO<sub>x</sub> Ozone Season allowance allocations for 2012 will be determined in accordance with section 96.342(e).

(2) By October 31, 2008, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(e) and (f), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31, 2009, and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season new unit set-aside allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342 (g) for the control period in the year of the applicable deadline for submission under this paragraph.

**Section 96.342 CAIR NO<sub>x</sub> Ozone Season Allowance Allocations.**

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO<sub>x</sub> Ozone Season allowance allocations for EGUs for each CAIR NO<sub>x</sub> Ozone Season unit under section 96.341(a) will be:

(i) The allowances for the control periods 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control period for which the CAIR NO<sub>x</sub> Ozone Season allowance allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

## 26 FINAL REGULATIONS

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(ii) For a CAIR NO<sub>x</sub> Ozone Season allowance allocation under section 96.341(a)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven and eight years before the first year of the control period for which the CAIR NO<sub>x</sub> Ozone Season allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(2) A unit's control period heat input, and a unit's status as coal-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO<sub>x</sub> emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. Heat input data under 40 CFR part 75 will be obtained from the Administrator.

(b) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO<sub>x</sub> Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO<sub>x</sub> Ozone Season allowances equal to 97 percent of the tons of NO<sub>x</sub> emissions in the State EGU trading budget for a control period under section 96.340 (except as provided in paragraph (d) of this section).

(2) The Department will allocate CAIR NO<sub>x</sub> Ozone Season allowances to each CAIR NO<sub>x</sub> Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO<sub>x</sub> Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO<sub>x</sub> Ozone Season unit to the total amount of baseline heat input of all such CAIR NO<sub>x</sub> Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(3) CAIR NO<sub>x</sub> allocations for the 2009 ozone season can be used for the excess penalty deductions for the 2008 control period of the NO<sub>x</sub> Trading program under R. 61-62.96.54.

(c) **EGU New Unit Set-aside** - For each control period in 2009 and thereafter, the Department will allocate CAIR NO<sub>x</sub> Ozone Season allowances to CAIR NO<sub>x</sub> Ozone Season units in the State that are not allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO<sub>x</sub> Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO<sub>x</sub> Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO<sub>x</sub> emissions in the State EGU trading budget under section 96.340(a).

(2) The CAIR designated representative of such a CAIR NO<sub>x</sub> Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO<sub>x</sub> Ozone Season allowances, starting with the latter of the control period in 2009 or the first control period after the control period in which the CAIR NO<sub>x</sub> Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO<sub>x</sub> Ozone Season allowance allocation request for each control period for which CAIR NO<sub>x</sub> Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO<sub>x</sub> Ozone Season unit commences commercial operation.

(3) In a CAIR NO<sub>x</sub> Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO<sub>x</sub> Ozone Season allowances in an amount not exceeding the CAIR NO<sub>x</sub> Ozone Season unit's total tons of NO<sub>x</sub> emissions, in accordance with subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO<sub>x</sub> Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO<sub>x</sub> Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO<sub>x</sub> Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO<sub>x</sub> Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO<sub>x</sub> Ozone Season allowances (if any) allocated for the control period to the CAIR NO<sub>x</sub> Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO<sub>x</sub> Ozone Season allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO<sub>x</sub> Ozone Season unit that was allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO<sub>x</sub> Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO<sub>x</sub> Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 97 percent for a control period of the amount of tons of NO<sub>x</sub> emissions in the State EGU trading budget under section 96.340, and rounded to the nearest whole allowance as appropriate.

## 28 FINAL REGULATIONS

(e) The baseline heat input (in mmBtu) used with respect to CAIR NO<sub>x</sub> Ozone Season allowance allocations for non-EGUs for each CAIR NO<sub>x</sub> Ozone Season unit under section 96.341(b) will be:

(1) For a CAIR NO<sub>x</sub> Ozone Season allowance allocation under section 96.341 (b)(1), the allowances will be determined as follows:

(i) For the control period for the years 2009, 2010 and 2011, the allocations will be determined using the unit's baseline heat input equal to the average of the two highest amounts of the unit's heat input for the control period in the years 1999, 2000, 2001, 2002, and 2003, or, if a unit only operated during one of these control periods, the heat input during the single year of operation.

(ii) For the control period for 2012, the allocations will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years in 2004 and 2005.

(2) For a CAIR NO<sub>x</sub> Ozone Season allowance allocation under section 96.341(b)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven and eight years before the first year of the control period for which the CAIR NO<sub>x</sub> Ozone Season allowance allocation is being calculated.

(3) The unit's total heat input for the control period in each year specified under paragraph (e) will be determined in accordance with 40 CFR part 75 to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year. Heat input data under 40 CFR part 75 will be obtained from the Administrator.

(f) (1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO<sub>x</sub> Ozone Season units in the State that have a baseline heat input (as determined under paragraph (e) of this section) a total amount of CAIR NO<sub>x</sub> Ozone Season allowances equal to 97 percent for a control period of the tons of NO<sub>x</sub> emissions in the State Non-EGU trading budget under section 96.340(b).

(2) The Department will allocate CAIR NO<sub>x</sub> Ozone Season allowances to each CAIR NO<sub>x</sub> Ozone Season unit under paragraph (f)(1) of this section in an amount determined by multiplying the total amount of CAIR NO<sub>x</sub> Ozone Season allowances allocated under paragraph (f)(1) of this section by the ratio of the baseline heat input of such CAIR NO<sub>x</sub> Ozone Season unit to the total amount of baseline heat input of all such CAIR NO<sub>x</sub> Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(g) **Non-EGU New Unit Set-aside** - For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO<sub>x</sub> Ozone Season allowances to CAIR NO<sub>x</sub> Ozone Season units in the State that are not allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO<sub>x</sub> Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO<sub>x</sub> Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO<sub>x</sub> emissions in the State Non-EGU trading budget under section 96.340(b).

(2) The CAIR designated representative of such a CAIR NO<sub>x</sub> Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO<sub>x</sub> Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO<sub>x</sub> Ozone Season unit commences operation and until the first control period for which the unit is allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (h) of this section. The CAIR NO<sub>x</sub> Ozone Season allowance allocation request must be submitted on or before February 1 before the

first control period for which the CAIR NO<sub>x</sub> Ozone Season allowances are requested and after the date on which the CAIR NO<sub>x</sub> Ozone Season unit commences commercial operation.

(3) In a CAIR NO<sub>x</sub> Ozone Season allowance allocation request under paragraph (g)(2) of this section, the CAIR designated representative may request for a control period CAIR NO<sub>x</sub> Ozone Season allowances in an amount not exceeding the CAIR NO<sub>x</sub> Ozone Season unit's total tons of NO<sub>x</sub> emissions, in accordance with subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO<sub>x</sub> Ozone Season allowance allocation request under paragraph (g)(2) of this section and will allocate CAIR NO<sub>x</sub> Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (g)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (g)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (g)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) to each CAIR NO<sub>x</sub> Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(ii) of this section.

(iv) If the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (g)(4)(i) of this section, then the Department will allocate to each CAIR NO<sub>x</sub> Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(ii) of this section the amount of the CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section), multiplied by the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (g)(4)(i) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO<sub>x</sub> Ozone Season allowances (if any) allocated for the control period to the CAIR NO<sub>x</sub> Ozone Season unit covered by the request.

(h) If, after completion of the procedures under paragraph (g)(4) of this section for a control period, any unallocated CAIR NO<sub>x</sub> Ozone Season allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO<sub>x</sub> Ozone Season unit that was allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (f) of this section an amount of CAIR NO<sub>x</sub> Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO<sub>x</sub> Ozone Season allowances, multiplied by the unit's allocation under paragraph (f) of this section, divided by 97 percent for a control period of the amount of tons of NO<sub>x</sub> emissions in the State Non-EGU trading budget under section 96.340(b), and rounded to the nearest whole allowance as appropriate.

#### **Subpart FFFF - "CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System"**

The provisions of Title 40 CFR Part 96, subpart FFFF, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

## 30 FINAL REGULATIONS

40 CFR Part 96 subpart FFFF			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Subpart GGGG - “CAIR NO<sub>x</sub> Ozone Season Allowance Transfers”

The provisions of Title 40 CFR Part 96, subpart GGGG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart GGGG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

### Subpart HHHH - “Monitoring and Reporting”

The provisions of Title 40 CFR Part 96, subpart HHHH, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart HHHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Subpart IIII - “CAIR NO<sub>x</sub> Ozone Season Opt-in Units”

The provisions of Title 40 CFR Part 96, subpart IIII, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 subpart IIII			
Federal Register Citation	Volume	Date	Notice
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

### Fiscal Impact Statement:

Existing staff and resources will be utilized to implement these amendments.

### Statement of Need and Reasonableness:

The Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

## DESCRIPTION OF REGULATION:

Purpose: On March 10, 2005, and March 15, 2005, the United States Environmental Protection Agency (EPA) finalized two rules known as the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)” (also referred to as CAIR), and the “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units” (also referred to as CAMR), respectively.

CAIR was published in the *Federal Register* on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In CAIR, the EPA found that South Carolina is one of the 28 states that contributes significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind states. The EPA is requiring these states to revise their SIPs to reduce emissions of sulfur dioxide (SO<sub>2</sub>) and/or nitrogen oxides (NO<sub>x</sub>). Sulfur dioxide is a precursor to PM<sub>2.5</sub> formation, and NO<sub>x</sub> is a precursor to both PM<sub>2.5</sub> and ozone formation. The EPA has determined that electric generating units (EGUs) in South Carolina contribute to nonattainment of PM<sub>2.5</sub> and 8-hour ozone in downwind states.

CAMR was published in the *Federal Register* on May 18, 2005 [70 FR 28606]. In accordance with Section 111 of the Clean Air Act, this rule establishes standards of performance for mercury for new and existing coal-fired EGUs that states must adopt and requires EPA review and approval. CAMR establishes a cap-and-trade program for mercury emissions from new and existing coal-fired EGUs that states can adopt as a means of complying with the Federal requirements. If a state fails to submit a satisfactory plan, referred to as a 111(d) Plan, EPA has the authority to prescribe a plan for the state.

EPA coordinated the concurrent release of CAMR with CAIR because a “co-benefit” of implementing the mechanisms for controlling SO<sub>2</sub> and NO<sub>x</sub> emissions as required by CAIR is the reduction of mercury emissions. Coordinating the development of CAMR with CAIR allows states to take advantage of the mercury emissions reductions that can be achieved by the air pollution controls designed and installed to reduce SO<sub>2</sub> and NO<sub>x</sub>.

The EPA has established a schedule for states to submit their SIP and 111(d) Plan. South Carolina must submit its SIP under CAIR to EPA by September 11, 2006, and the 111(d) Plan under CAMR to EPA by November 17, 2006. Due to our lengthy regulation development process, the Department has informed the EPA that our SIP and 111(d) plan will not be submitted to them by their deadlines. The EPA has already finalized a Federal Implementation Plan (FIP) and 111(d) Plan for states not meeting the deadline. However, the EPA has assured the Department that it will withdraw its FIP and 111(d) Plan when the Department finalizes and submits its SIP and 111(d) Plan to them.

Legal Authority: The legal authority for Regulation 61-62 is Section 48-1-10 et seq., S.C. Code of Laws.

Plan for Implementation: The amendments will take effect upon approval by the Board of Health and Environmental Control and the General Assembly, and publication in the *State Register*. The amendments will be implemented by providing the regulated community with copies of the regulation.

## DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The regulation is needed and is reasonable because it fulfills the Department’s obligation to submit revisions to the State Implementation Plan (SIP) incorporating the finalized CAIR published by EPA on May 12, 2005, and to submit a 111(d) plan incorporating the finalized CAMR published by EPA on May 18, 2005. Most of EPA’s finalized rules were incorporated; however, the Department is exercising its discretion by proposing options to the model rule that have been negotiated with stakeholders and are therefore better suited to South Carolina’s needs.

## 32 FINAL REGULATIONS

### DETERMINATION OF COSTS AND BENEFITS:

These revisions are being made to comply with a Federal mandate. The Department has worked with stakeholders to determine the best approach to implementing these regulations. For example, the Federal CAIR proposes an allowance reallocation schedule every five years, with the initial heat input at the beginning of the rule implementation used in the determination of allowances received. To be more responsive to changes in the market, the Department and the affected regulated community agreed on a four-year allocation schedule that utilizes the most current heat input data to determine the allowances received. This allows new facilities to enter into the programs more quickly, provides time for the regulated community to be responsive to changes, and considers changes in the regulated community's need for the allowances.

The Federal CAMR provides for a budget of mercury allowances that are distributed to coal-fired utilities in the State free of charge. These allowances can be sold or traded to other utilities participating in the EPA's cap-and-trade program, or they can be used by the utility to which they were given. Because South Carolina was allocated more allowances than historical data indicate that our utilities need and sixty water bodies in our State have fish consumption advisories because of mercury pollution, the Department is establishing a "Public Health Set-aside" whereby twenty-five (25) percent of the allowances provided to each utility will be held in a special account. Each utility will have access to those allowances only for compliance purposes during the calendar year in which they were assigned. Any remaining unused allowances at the end of a calendar year would be held in the account until 2018. In 2018 and thereafter, the allocation of mercury allowances for each utility is further reduced. The allowances for each utility that have accumulated in the Public Health Set-aside account will be made available to the utility only if emissions exceed the reduced allocations for the calendar years 2018, 2019, 2020, 2021, 2022, and 2023. At the end of the 2023 control period, any unused allowances in the utility's Public Health Set-aside account will be permanently retired.

The Department estimates that approximately 12.4% of the allowances in the State mercury budget for the 2010 through 2017 control periods will be permanently retired. These are allowances that the regulated utilities would have received under the Federal CAMR. Since the mercury allowances are currently valued at approximately \$2000.00 per allowance, this will result in a cost to the regulated utilities above and beyond the Federal CAMR. The estimated allowances to be retired represents approximately \$36,823,040.00 in money that could either be saved by the utilities by not having to buy allowances to meet compliance or by selling the extra allowances they do not need in order to generate revenue. While this seems like a great deal of money, the allowances considered in determining this amount are to be allocated and used over a period of time of twelve years or more. Considering this, the value of the allowances expected to be retired represents approximately \$2,630,000.00 each year. In addition, the nitrous oxide and sulfur dioxide emissions control equipment installed at coal-fired utilities as a requirement of CAIR also remove a significant amount of mercury. This co-benefit will result in fewer mercury allowances being needed by the utilities, and the Department expects many of the units with control technology to use significantly less mercury allowances than the Department allocates. These mercury allowances can be banked by the utilities for future use or sold to generate revenue.

While the rule to comply with the Federal CAMR that is being proposed by the Department will result in increased costs to the utilities, the Department believes that the benefits outweigh the costs. Mercury in South Carolina's waterways continues to be a major concern. As stated previously, sixty water bodies in the State currently have mercury fish consumption advisories. An advisory suggests a safe limit, or amount, of fish from the water body that a person can consume without suffering any harmful effects. When mercury enters the water, it can be changed to methylmercury by bacteria, which are consumed by larger organisms. The methylmercury accumulates and its concentration increases as it moves up the food chain. Eventually, the larger fish caught and eaten by humans contain large amounts of methylmercury. Methylmercury can cause harmful effects in all people, but unborn and young children are most susceptible because methylmercury affects the development of the nervous system and the brain. It can cause learning and motor skill disabilities.



**UNCERTAINTIES OF ESTIMATES:**

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community. Existing staff and resources will be utilized to implement these amendments.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

The revisions are designed to significantly reduce the emissions of nitrous oxides, sulfur dioxides, and mercury. Nitrous oxides contribute to the formation of ozone and particulate matter, and sulfur dioxide contributes to the formation of particulate matter. Airborne mercury falls to the earth and is deposited in bodies of water, where it can be converted into methylmercury. Methylmercury is consumed by fish, which are then eaten by people. All of the pollutants (nitrous oxides, sulfur dioxide, and mercury) have been shown to have detrimental effects on the health of humans. The significant reductions in the emissions of these pollutants will protect the health of the residents of South Carolina.

**DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:**

EPA has determined that the pollutants addressed by these rules cause an overwhelming detrimental effect on the health of humans. Ozone and particulate matter cause respiratory problems and illnesses, while mercury causes neurological disorders and has a greater affect on unborn babies and children. The EPA and the State believe that the environment and public health will benefit from implementing these rules to reduce the emissions of these pollutants.

**STATEMENT OF RATIONALE:**

These revisions have been promulgated in order to comply with a Federal mandate requiring states to lower emissions of nitrous oxides, sulfur dioxide, and mercury. Scientific studies have shown that nitrous oxides are a precursor to ozone and particulate matter, while sulfur dioxide is a precursor to particulate matter, and that these pollutants have serious negative health consequences to the public. These include lung damage, aggravated asthma, and even death. The pathway of mercury from the combustion of coal to our waterways, to fish, and finally to humans has been well documented. When humans consume fish containing methylmercury, the methylmercury is almost completely absorbed into the bloodstream and distributed to all tissues, including the brain. In pregnant women, the methylmercury can be passed to the developing fetus, where it can negatively affect brain development. In young children, it can cause problems with verbal memory, language skills, motor function, attention span, and visual-spatial abilities. The experience and professional judgment of the Department's staff were relied upon in developing the regulation. The Department has added some additional requirements that go beyond the scope of the Federal CAMR. This will result in an increased cost to the regulated community beyond the requirements in the Federal CAMR; however, the Department believes the public health benefits achieved by the further reduction of mercury emissions to the environment outweigh the increased costs to the regulated community.

In 2006, fish advisories for mercury were issued for sixty water bodies in the State. These advisories were issued because samples of fish tissue taken from these water bodies repeatedly showed elevated levels of methylmercury that could be harmful if consumed in quantities that exceed the amount recommended by the advisory. Decreasing emissions of mercury from coal-fired utilities in South Carolina should reduce the amount of mercury that affects the waterways of the State and should reduce the number of fish consumption advisories issued.